

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DEXTER GATBONTON,

Plaintiff,

vs.

PAMELA K. LAUER et al.,

Defendants.

2:12-cv-02079-RCJ-VCF

ORDER

This is a habeas corpus action pursuant to 28 U.S.C. § 2241 by a permanent resident alien detained in Las Vegas, Nevada pursuant to § 236(c) of the Immigration and Naturalization Act, 8 U.S.C. § 1226(c)(1)(D). The facts are not contested. The Petition rests upon the single ground that the language of “when released” in § 1226(c)(1)(D) does not permit detention unless effected immediately upon release for the offense for which detention is authorized. Petitioner argues that his detention three years after release for the offense authorizing detention is therefore not permitted under the statute. The district courts are in disagreement, but the two courts of appeals to address the question have held that the statute is at most ambiguous as to any immediacy requirement such that the courts under *Chevron* should defer to the agency’s interpretation that there is no immediacy requirement, and that the statutory interpretation issue is not determinative in any case because the statute does not indicate that officials lose authority to detain upon delay. *See Sylvain v. Attorney General*, 714 F.3d 150, 157 (3d Cir. 2013) (four-year delay); *Hosh v. Lucero*, 680 F.3d 375, 382 (4th Cir. 2012) (three-year delay). The Court agrees and therefore denies the Petition.

CONCLUSION

IT IS HEREBY ORDERED that the Motion to Extend Time (ECF No. 6) is GRANTED, and the Answer (ECF No. 13) is deemed timely.

IT IS FURTHER ORDERED that the Petition is DENIED.

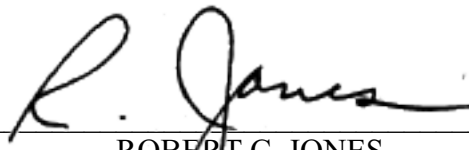
IT IS FURTHER ORDERED that the Motion for Leave to Appear by Government Attorney (ECF No. 7) is DENIED, as there is no indication the local Assistant U.S. Attorneys are incapable of litigating this matter.

IT IS FURTHER ORDERED that the Motion for Judgment on the Pleadings (ECF No. 9) and the Motion for Expedited Hearing (ECF No. 10) are DENIED.

IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

IT IS SO ORDERED.

Dated this 12th day of July, 2013.



ROBERT C. JONES
United States District Judge